

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/21/01156/2014 & MA/21/615/2016

HYDERABAD, this the 2nd day of September, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



R.Noor Ahamed
S/o Sri R.Dasthagirs,
Age : 32 years, Occ : Sr.ALP,
Sanathnagar Depot, Secunderabad Division,
R/o Sanathnagr, Hyderabad, Telangana.

... Applicant

(By Advocate: Mr.K.Ram Murthy)

Vs.

1. Union of India,
Rep. by its General Manager,
South Central Railway, Ministry of Railways,
Sanchalan Bhavan, Secunderbad-500 071.
2. The Divisional Railway Manager,
Personnel Branch,
South Central Railway, 4th Floor,
Sanchalan Bhavan, Secunderbad-500 071.
3. The Divisional Railway Manager,
Personnel Branch, South Central Railway,
Guntakal Division, Andhra Pradesh.

... Respondents

(By Advocate: Mrs.Vijaya Sagi, SC for Railways)

O R D E R (ORAL)**Hon'ble Mr. B.V. Sudhakar, Admn. Member****Through Video Conferencing :**

2. OA has been filed in regard to cancellation of Inter Divisional transfer.
3. Brief facts of the case are that the applicant, while working as Asst. Loco Pilot (for short "*ALP*") at Sanathnagar Depot, Secunderabad Division of SC Railway, applied for mutual transfer to Guntakal Division of SC Railway with one Mr. K. Mahesh, ALP and the same was not granted for about 2 years. Hence, applicant represented for cancellation of the mutual transfer on 1.9.2013 & 27.9.2014. In the meanwhile, applicant was promoted as Sr. ALP and hence, being apprehensive that the respondents may relieve him on mutual transfer to the lower grade of ALP, the OA has been filed. This Tribunal, vide order dt. 30.09.2014, granted an order of status quo in respect of the continuation of the applicant in the present Division without giving effect to the mutual transfer representation.
4. The contentions of the applicant are that the mutual transfer was applied when he was in the grade of ALP and on promotion to Sr. ALP, it has become *infructuous* and time barred. Request for cancellation of the Mutual transfer has not been acted upon.
5. In the reply statement, respondents state that the applicant applied for Inter Divisional mutual transfer on 31.10.2012 from Secunderabad Division to Guntakal

Division, which was approved on 26.9.2014. Representation dated 1.9.2013 was addressed to the GM, SC Railway instead of sending it to the Divisional authority, giving room for the suspicion that the representation was written on a later date and never sent to GM, SC Railway. However, the representation dated 27.9.2014 was received. Applicant was promoted as Sr. ALP on 4.6.2014. Applicant did not represent for cancellation of mutual transfer before issue of the impugned order. There is no time limit to issue Inter Divisional transfer and hence, the question of the order becoming *infructuous* does not arise. Applicant, on approaching the Tribunal, an interim order to maintain status quo was issued on 30.9.2014.

6. Heard both the counsel and perused the pleadings on record.

7. I. Applicant applied for mutual transfer while he was working in ALP grade in 2012, which was approved on 26.9.2014, after nearly 2 years of making the request. In the meanwhile, the applicant was promoted as Sr. A.L.P. on 4.6.2014. Applicant represented on 1.9.2013 and 27.9.2014. Respondents denied receipt of the representation dated 1.9.2013 but acknowledged receipt of the one dated 27.9.2014. As seen from the records the applicant was granted mutual transfer when he was in the grade of ALP with another official of Guntakal Division in the same grade of ALP. In other words, applicant expressed willingness for mutual transfer in the grade of ALP. However, as on the date of approval of the mutual transfer the applicant was in the grade of Sr. ALP. Consequently, he would be borne in the seniority list of a higher post of different cadre. Hence, the mutual transfer which was to be affected in ALP grade cannot be effected when the applicant has been working in the higher grade of Sr. ALP. Such a transfer would tantamount to demotion, which will arise only in cases of disciplinary action or when the applicant voluntary consents to lower grade in

mutual transfer. In respect of the applicant, both the contingencies have not arisen. Hence, implementation of the mutual transfer would be impractical. Further, there has been delay of 2 years in issuing the mutual transfer. Had it been effected promptly, the issue would not have arisen. Moreover, before promoting the applicant, respondents could have at least verified about the pendency of the mutual transfer and sought applicant's reconfirmation as to whether he would be still interested to seek mutual transfer to a lower grade consequent to his promotion as Sr. ALP. Respondents have not taken this step and hence, it is their mistake. The mistake of the respondents should not recoil on to the applicant in terms of losing promotion as Sr. A.L.P. While observing so, we take support of the Hon'ble Supreme Court judgment in *Nirmal Chandra Bhattacharjee v. Union of India*, 1991 Supp (2) SCC 363 wherein it was held

"The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

II. Further, whenever any administrative order is issued which has adverse civil consequence, then the Principles of Natural Justice dictate that the effected employee should be put on notice. The adverse civil consequence is forcing the applicant to join in a lower grade on mutual transfer. Respondents for not having issued the notice have violated the Principles of Justice.

III. Moreover, as per FR 15, which is extracted hereunder, transfer cannot be affected to a post carrying lower pay.

"(a) The President may transfer a Government servant from one post to another provided that except-

(1) on account of inefficiency or misbehaviour, or

(2) on his written request, a Government servant shall not be transferred to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien."

Respondents by attempting to enforce the mutual transfer against the willingness of the applicant would invariably be flouting the above norm.

IV. Lastly, respondents have not acted on the representation of the applicant which they have acknowledged to have received on 27.9.2014. Without disposal of the representation, forcing the applicant to accept mutual transfer against his willingness and that to his disadvantage, is unfair, to say the least.

V. Further, Hon'ble Ernakulam Bench has dealt with a similar issue in OA 276/2008 and gave relief, vide order dt. 07.11.2008, as is sought in the instant OA by covering all the aspects of mutual transfer. It is binding on this Bench as per judgment of Hon'ble Supreme Court in *Sub-Inspector Rooplal & Anr. vs Lt. Governor through Chief Secretary, Delhi & Ors, (2000) 1 SCC 644*.

VI. Therefore, viewed from any angle, be it from the view point of rules or law, the OA succeeds. Hence, the order dated 26.9.2014 issued by the respondents effecting the Inter Divisional Mutual Transfer of the applicant, is set aside.

VII. With above direction, the OA is allowed. MA No.615/2016 stands disposed. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER(JUDL.)

al/evr